

1 FAMILY COURT OF THE STATE OF NEW YORK
2 CITY OF NEW YORK - COUNTY OF NEW YORK

PART 7

3 -----x
4 In the Matter of

5 A [REDACTED] B [REDACTED],

6 Respondent,

Docket No.:
[REDACTED]

7 A Person Alleged to be a
8 Juvenile Delinquent.

9 -----x
10 Held: September 14, 2022
11 60 Lafayette Street
12 New York, New York 10013

13 Virtual Court, Part 7

14 Before: Hon. CAROL GOLDSTEIN, Judge
15 Family Court of the State of New York

16 Appearances:

17 CHRISTINA LASLO, Esq.
18 Assistant Corporation Counsel
19 Attorney for the Presentment Agency

20 HEATHER SASLOVSKY, Esq.

21 The Legal Aid Society

22 Attorney for respondent, A [REDACTED] B [REDACTED]

23 Also Present:

24 A [REDACTED] B [REDACTED], Respondent

25 Raashmaa Rampersad, New York City Department of Probation

A [REDACTED] B [REDACTED], Sr., Father

M [REDACTED] D [REDACTED], Mother

Bryanna E. Jefferson
Official Court Reporter

1 COURT OFFICER: Good afternoon. Calling number one
2 on the calendar in matter of B [REDACTED]. Counsels.

3 MS LASLO: Assistant Corporation Counsel, Christina
4 Laslo, L-A-S-L-O. Appearing on behalf of the Presentment
5 Agency. Good afternoon.

6 MS. SASLOVSKY: The Legal Aid Society by Heather
7 Saslovsky appearing for the youth, A [REDACTED] B [REDACTED].

8 DEPARTMENT OF PROBATION: Raashmaa Rampersad, New
9 York City Department of Probation.

10 COURT OFFICER: Sir, raise your right hand. Do you
11 swear or affirm to tell the truth?

12 MR. B [REDACTED] SR.: I do.

13 COURT OFFICER: Please state your name and relation
14 to the young man.

15 MR. B [REDACTED] SR.: My name is A [REDACTED] B [REDACTED] and
16 that's my son.

17 COURT OFFICER: Thank you. And miss, do you swear
18 or affirm to tell the truth?

19 MS. D [REDACTED]: Yes.

20 COURT OFFICER: Please state your name and
21 relationship.

22 MS. D [REDACTED]: M [REDACTED] D [REDACTED], mother.

23 COURT OFFICER: Thank you. And now we're just
24 waiting on the respondent.

25 MS. SASLOVSKY: Your Honor, Ms. Williams from

1 detention left a message and said she was waiting to be let
2 in.

3 COURT OFFICER: I don't see her in the lobby.
4 Maybe it just hasn't popped in yet. Or maybe she has the
5 wrong link.

6 THE COURT: Could somebody send her the correct
7 link?

8 MS. SASLOVSKY: Your Honor, I have sent it.

9 MS. LASLO: I did as well.

10 THE COURT: Thank you.

11 THE CLERK: Counsels, do you any of you have the
12 e-mail for Ms. Williams and could possibly put it in the
13 chat.

14 MS. LASLO: I just tried calling, but I did not get
15 a response. It was my understanding from Ms. Williams
16 earlier today that she is very short staffed.

17 MS. SASLOVSKY: I don't believe that was the issue.
18 I spoke to Ms. Williams earlier today. I offered to send
19 someone with a laptop or figure out some other method. She
20 said she could absolutely handle it. A colleague of mine
21 physically was in detention. They were already set up and
22 ready to go. I did call detention while we are waiting
23 here. A different individual answered, not Ms. Williams.
24 And he said that she was working on it and there were some
25 tech problems. And I'm still happy to send someone down

1 with a laptop if you think that would help. I just feel
2 like at some point, all of us intervening might be slowing
3 things down.

4 COURT OFFICER: Young man, raise your right hand.
5 Do you swear or affirm to tell the truth?

6 MR. B [REDACTED]: Yes.

7 COURT OFFICER: Please state your name and age.

8 MR. B [REDACTED]: A [REDACTED] B [REDACTED], 17.

9 THE COURT: Okay. I'm going to read the decision
10 into the record. The Court makes the following findings of
11 fact after a Mapp Hearing, based upon the testimonies of
12 Officers Beharri and Rodriguez, videos from the body worn
13 camera of officers, and traffic videos -- videos from
14 traffic cameras.

15 On March 18, 2022, Officer Lallit Beharri, with his
16 partner, Officer Christopher Rodriguez, of the Neighborhood
17 Safety Team were driving around the 23rd precinct on special
18 enforcement assignment. Officer Beharri described his
19 duties that day as, "We drive around the precinct and
20 enforce summons, arrests, and that kind of stuff." Officer
21 Beharri was the recorder and Officer Rodriguez was driving.

22 At approximately 6:55 p.m., the officers were
23 driving west on East 115th Street when officer Beharri
24 observed two African American young men cross the
25 intersection of East 115th and 2nd Avenue against the light.

1 Officer Beharri observed the two individuals go into a store
2 at the corner of 115th and 2nd Avenue. Officer Beharri
3 called his sergeant and advised his sergeant that he was
4 about to stop two individuals.

5 The police vehicle was stopped and Officer Beharri
6 and Officer Rodriguez exited. It was Officer Beharri's
7 stated intention to enforce a jaywalking ordinance. Officer
8 Beharri stopped Respondent, one of the individuals; and
9 Officer Rodriguez stopped J [REDACTED] D [REDACTED], the other
10 individual, as they were exiting the store. Officer Beharri
11 asked Respondent for ID. Respondent said he was 16 years
12 old and did not have ID. Respondent gave his name. At this
13 point, Officer Beharri recognized Respondent from an intel
14 flyer.

15 Respondent gave his name as A [REDACTED] B [REDACTED] and
16 stated that his father had the same name. He gave his
17 address as 833 Longfellow -- Longfellow twice. At the same
18 time, Officer Rodriguez asked J [REDACTED] D [REDACTED] for ID. J [REDACTED]
19 D [REDACTED] said he was 17 years old and didn't have ID. J [REDACTED]
20 D [REDACTED] asked Officer Rodriguez if he wanted his name.
21 Officer Rodriguez said no.

22 During the encounter, Respondent asked Officer
23 Beharri to look up his name right now and to check out the
24 information he was giving the officer. He made this request
25 repeatedly. Officer Beharri testified that nothing about

1 his encounter with Respondent made him afraid. According to
2 Officer Beharri, Respondent was not aggressive. Respondent
3 did not threaten him, curse him, or try to assault him.

4 At this point, officer Beharri's sergeant had
5 arrived at the scene with his partner, Officer Zeqiri.
6 There were thus four officers at the scene. And
7 coincidentally, there were two other NYPD officers across
8 the street. Police Officer Beharri placed Respondent in
9 handcuffs. J [REDACTED] D [REDACTED] was also put in cuffs. The
10 purpose was to bring the youths to the precinct to verify
11 their identification.

12 After he was handcuffed, Respondent was frisked and
13 a 25-caliber firearm was removed from Respondent's right
14 jacket pocket. Prior to cuffing the respondent, none of the
15 four officers on the scene asked Respondent any further
16 questions or made any efforts to verify the information
17 Respondent had provided. They did not attempt to call a
18 parent or even ask for a parent's phone number. Nor did
19 they call or radio into the precinct to do a pedigree check,
20 which would verify Respondent's identity and address.
21 Neither did Officer Beharri ask one of the other three
22 officers to do a pedigree check.

23 When the Court inquired as to why the pedigree
24 check could not be conducted at the scene with four officers
25 present, the following colloquy occurred:

1 "THE COURT: Can I ask how come you didn't conduct
2 a pedigree while you were at the scene?"

3 THE COURT: When I say witness, it's Officer
4 Beharri.

5 "THE WITNESS: Like get his full name or date of
6 birth and call parents and all that on the scene? At the
7 time of the stop, being there, we didn't want, like, a crowd
8 to form. Like any kinds of things could happen. It's safer
9 for us to conduct a pedigree check back at the precinct."

10 "THE COURT: Even though there were four officers
11 there? "

12 "THE WITNESS: Correct."

13 "THE COURT: Could you have done a pedigree check
14 by calling in?"

15 "THE WITNESS: By calling his parents at that
16 time?"

17 "THE COURT: Or calling his parents or calling into
18 to get the pedigree check from your database."

19 "THE WITNESS: I could have, but it would've taken
20 a while. Like, what if I'm calling his parents and his mom
21 is not picking up and I'm just there?"

22 "THE COURT: What about getting the information
23 from the computer?"

24 "THE WITNESS: Like calling a cop back at the
25 precinct to run everything?"

1 "THE COURT: To run it through."

2 "THE WITNESS: I could have. That could have taken
3 a while, too. It was really a time factor. We didn't want
4 to take the chance."

5 THE COURT: Notably, there was no testimony of a
6 crowd gathering, nor did the video show a crowd.
7 Furthermore, there were no -- there was not the appearance
8 of any other unsafe condition at the scene before Respondent
9 and J [REDACTED] D [REDACTED] were cuffed. At the precinct, Respondent
10 gave his name to Officer Chung, who ran his name and called
11 Respondent's mother and was able to verify the information.
12 Respondent was arrested for criminal possession of a weapon,
13 but never received a summons for jaywalking.

14 At the same moment that Respondent and J [REDACTED]
15 D [REDACTED] were observed jaywalking, the video of the traffic
16 cameras at the corner of East 115th Street and 2nd Avenue
17 revealed other safety and enforcement issues which were not
18 addressed by Officer Beharri and Officer Rodriguez. These
19 included a motorcycle running a red light and driving on the
20 sidewalk. A motorized wheelchair traveling in the street
21 against traffic. And a truck parked in such a way that it
22 blocked the crosswalk.

23 Jaywalking is a violation of 34 RCNY 4-04(c)(1), it
24 is a traffic infraction. Pursuant to penal law 10.001 and
25 2, a traffic infraction, although not criminal is an

1 offense. Pursuant to C.P.L 140.10(1)(a), an officer may
2 arrest an individual for an offense that occurs in his
3 presence. Pursuant to penal law 40.00(3)(b), and individual
4 who is 16 or 17 years old is criminally responsible for a
5 traffic infraction. Thus the C.P.L.R provision including
6 140.10(1)(a) is applicable.

7 However, pursuant to a recently amended provision
8 in C.P.L 150.20, when an officer is authorized to arrest a
9 person without a warrant for other than an A, B, C, or D
10 felony, and for certain other specified sections of the
11 penal law, not applicable here, the officer shall, expect
12 under circumstances that do not exist in this case, instead
13 serve upon such person an appearance ticket. With respect
14 to production of an appearance ticket, the officer is not
15 required to issue such appearance tickets when -- and I'm
16 now quoting from the statute. And that is C.P.L
17 150.20(1)(b)(iii).

18 "The person has been given a responsible
19 opportunity to make their verifiable identity and method of
20 contact known. And has been unable or unwilling to do so.
21 So that a custodial arrest is necessary to subject the
22 individual to the jurisdiction of the Court. For the
23 purpose of this section, an officer may rely on various
24 factors to determine a person's identity, including but not
25 limited to, personal knowledge of such person. Such

1 person's self identification or photographic identification.
2 There is no requirement that a personal present photographic
3 identification in order to be issued an appearance ticket in
4 lieu of an arrest, where the person's identity is otherwise
5 verifiable."

6 Prior to the amendment, the statute said that an
7 officer may issue an appearance ticket. Thus leaving it up
8 to the officer's discretion whether to issue an appearance
9 ticket or arrest. The plain reading and intent of this
10 amendment is to remove the discretion from the officer. The
11 individual detained must be given an opportunity to have his
12 identification verified, even without a government
13 identification card.

14 The Court holds that an officer may not proceed
15 directly to arrest a cooperative individual without making
16 any effort to verify that person's identity and contact
17 information, which has been provided. Contrary to the
18 Presentment Agency's position, the officer can not proceed
19 directly to making an arrest when no government
20 identification is proffered.

21 Respondent was cooperative, not aggressive or
22 threatening. He gave his name, his address, and his
23 father's name even without being asked. He repeatedly asked
24 the officer to check it out and confirm his identification.
25 Moreover, Officer Beharri recognized Respondent from an

1 intel flyer. Respondent could do more to verify his
2 identity. The next step was up to the police, but the
3 police failed to do anything with respect to verification.
4 The officer acknowledged that he could call Respondent's
5 parents or call the precinct for computer pedigree check.

6 The Court finds that the reasons the officer gave
7 for not doing so are contrived and not credited by the
8 Court. Officer Beharri said that he was concerned about a
9 crowd gathering. The Court watched the video, which went on
10 for eight minutes and a crowd never gathered. Nor could the
11 officer point to any other safety concerns that was not
12 purely speculative. Significantly, there were four officers
13 on the scene prior to Respondent and J [REDACTED] D [REDACTED] being
14 handcuffed.

15 Since C.P.L 150.20 was violated, the arrest was
16 unlawful and the property, namely the firearm recovered from
17 Respondent, after he was placed in handcuffs must be
18 suppressed. Respondent argues that the stop for jaywalking
19 was subterfuge and was pretextual. It was merely a pretext
20 for the officer to search Respondent and J [REDACTED] D [REDACTED], two
21 young African American men. Pointing out that there were
22 more serious traffic infraction than J walk occurring at the
23 same time. Neither officer had any interest in addressing
24 these infractions. For instance, a motorcycle ran a red
25 light and drove on to the sidewalk. Motorized wheelchair

1 was riding the wrong way against vehicular traffic on the
2 street.

3 Also, it was unlikely that an officer would call
4 for backup when he was just about to issue a jaywalking
5 summons. When he called for backup, he indicated that it
6 was stop, not that he was issuing a summons for jaywalking.
7 Moreover, the officer had no interest in verifying the
8 identification of Respondent and J [REDACTED] D [REDACTED]. Going so
9 far as telling J [REDACTED] D [REDACTED] that he -- Officer Rodriguez
10 telling J [REDACTED] D [REDACTED] that he was not interested in learning
11 his name when asked.

12 The officers likely knew that minors don't carry
13 state ID and the entire focus was on cuffing and searching
14 the two youths. The Courts finds that Respondent's argument
15 is convincing. However, the Court's decision is based
16 strictly on the failure of the officers to follow the
17 mandate of C.P.L 150.20, rendering the arrest and subsequent
18 search illegal.

19 The Court suppress the firearm recovered. Since
20 the only -- recovered from Respondent during the unlawful
21 search. Since the only charges against A [REDACTED] B [REDACTED] are
22 criminal procession of weapon, and that weapon is
23 suppressed, the petition is dismissed. Upon request of the
24 prosecution, the Court will stay sealing for 30 days.

25 MS. LASLO: Yes, your Honor. We are asking that

1 the Court stay the sealing for 30 days pursuant to Family
2 Court Act section 330.2(9) of inability to use the evidence
3 ordered suppresses has rendered the sum of proof available
4 to the Presentment Agency insufficient as a matter of law
5 and or so in its entirety that any reasonable possibility of
6 proving allegations contained in the petition has been
7 effectively destroyed.

8 THE COURT: That concludes this matter. And the
9 matter is -- what I'm going to do is -- I'm going to have to
10 calendar it for 30 days from today for sealing. Unless, of
11 course, it should not be sealed. It would be October 14th,
12 11 o'clock. Is that okay?

13 MS. LASLO: That's fine, your Honor.

14 DEPARTMENT OF PROBATION: Judge, I have a question.
15 The Court dismissed the petition. Therefore, ICM is
16 terminated. There's no petition?

17 THE COURT: That's correct, Ms. Rampersad.

18 DEPARTMENT OF PROBATION: Thank you, Judge.

19 MS. LASLO: Your Honor, the respondent is currently
20 in detention for an arrest that occurred yesterday. As of
21 this time, we still have not received word from probation as
22 to whether or not that matter will be referred. So at this
23 time, the respondent still is not able to be released from
24 detention.

25 MS. SASLOVSKY: I'm sure we'll have something soon.

1 It's my understand they've been doing the interviews. I
2 suspect my client will be released shortly.

3 THE COURT: Okay. Thank you. That concludes the
4 proceeding. Everybody can feel free to log off and have a
5 good day.

6 THE FATHER: Thank you.

7 THE MOTHER: Thank you.

8 MS. SASLOVSKY: Thank you.

9 MS. LASLO: Thank you.

10 *****
11 *****

12 *****
13 Court Reporter's Certification

14 I hereby certify that the foregoing transcript is a true and
15 accurate record of the stenographic proceedings in the above
16 matter.

17
18
19 *Bryanna E. Jefferson*
20 _____

21 Bryanna E. Jefferson
22 Official Court Reporter
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